UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Milwaukee, Wisconsin

SECURITYLINK FROM AMERITECH, INC.[1]

Employer

and

DENNIS W. SNIDER, An Individual

Petitioner

and Case 30-RD-1285

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 4603, AFL-CIO, CLC[2]

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[3] the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[1] The name of the Employer appears as amended at hearing.
[2] The name of the Union appears as amended at hearing.
[3] A brief submitted by the Union has been timely received and duly considered.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons stated herein.

BACKGROUND AND ISSUE

The Petitioner filed the above-captioned decertification petition on November 22, 1999, asserting that the Communications Workers of America, Local 4603, AFL-CIO, CLC, hereinafter referred to as the Union, is no longer the bargaining representative of the employees as defined in Section 9(a) of the Act. The Union and the Employer both assert that a contract exists to bar the processing of the petition. The Petitioner contends there is no contract-bar.

FACTS

The Employer is a corporation engaged in the business of retail sale, installation and service of security systems out of its facility located in Milwaukee, Wisconsin. On July 22, 1998, the Union was certified as the collective-bargaining representative of employees in the following unit: all full time and regular part-time residential and commercial installers, pre-inspection employees, stock room employees, service technicians, and fire testers employed by the Employer at its Milwaukee, Wisconsin, facility, but excluding alarm runners, central station alarm dispatcher, service dispatchers, installation coordinators/schedulers, office clerical employees, guards and supervisors as defined in the Act.

The Union and the Employer commenced contract negotiations in 1998. Several bargaining sessions were held. Salvatore LaCause, in his position of Administrative Assistant to the International Vice President, and in his previous position of International staff representative for District 4, was the Union official responsible for negotiating a contract with the Employer. Attorney Stephen Sferra was the chief spokesperson for the Employer during the bargaining sessions.

LaCause testified that on July 1, 1999,[4] the parties' final bargaining session, the parties completed negotiations on the collective-bargaining agreement (Agreement). Later that same day, the Union held a ratification meeting. LaCause was present at the meeting, and testified that the terms of the Agreement were reviewed with the membership of the bargaining unit at that time. Immediately following the review of the Agreement a ratification vote was held. The result of the vote was the membership approved the Agreement.

LaCause testified that he contacted Sferra by telephone on July 1 and informed him the membership ratified the Agreement. They agreed that Sferra would prepare a written document memorializing the complete Agreement. Thereafter, Sferra prepared and sent a letter dated July 5 to LaCause, which reads as follows:

> This letter will confirm that on July 1, 1999, the bargaining unit ratified the tentative agreement between SecurityLink from Ameritech, Inc. ("Company") and the Communications Workers of America ("Union") for a first collective bargaining agreement at the Company's Milwaukee, Wisconsin branch.
>
> Enclosed for review by you and your bargaining committee are five (5) copies of the draft "Agreement between SecurityLink from Ameritech, Inc. and Communications Workers of America (CWA), AFL-CIO, Effective July 1, 1999 to January 20, 2002." I believe that this draft accurately reflects all items agreed to between the parties during negotiations, including our final bargaining session on July 1, 1999. However, if the committee finds any errors or omissions, please give me a call to discuss any necessary revisions.

[4] Unless otherwise noted, all dates hereafter refer to 1999.

> Upon approval by the Union, I will prepare execution copies of the Agreement for signature by the parties.

The letter is signed by Sferra and enclosed copies of Sferra's draft of the Agreement.

LaCause testified that he believed this draft Agreement accurately reflected the parties' negotiated agreements, and that the only undecided matters were the positioning of the articles and grammatical changes. LaCause sent the following signed letter to Sferra dated July 12:

> I forwarded the drafts to [Local Union Vice President] Olivia Underwood and our Bargaining Team. I have asked them to proof it for clerical errors and/or positioning of articles.
>
> I am glad we finally attained an agreement that both parties could live with. It has been a learning experience being across the table from you again. Once again, you took advantage of me being a rookie! I don't know how you could sleep at night. All kidding aside, this was a tough one for both sides. This agreement is a good one compared to where we started.
>
> Now that Cleveland and Milwaukee are done, I hope to see you in Columbus!

Underwood, who is also an employee of the Employer, testified that the Local Union office received copies of the Agreement in July. She distributed the draft to members of the bargaining committee. Sometime in late October or early November, the bargaining committee completed review of the Agreement. During the week of November 15, LaCause and Sferra communicated thereafter via telephone regarding the Union's response to the Agreement. Those communications were completed during the week of November 15. LaCause described those communications in his uncontroverted testimony as follows:

> What Mr. Sferra and I did is came to agreement on what issues of grammatical change and/or fine-arting the agreement as far as what changes needed to be there, where hypothetically, it could have been on section 15, and he meant to say 16; also issues that were inappropriately clerical-wise put in were taken out of the contract. But the contract itself in whole -- nothing was changed.

For example, the parties discussed and agreed that the parties' already negotiated agreement regarding premium pay for Nicet certification should be reflected in the wage schedule of the

Agreement. This premium payment was already delineated in the parties' Letter of Understanding attached to the draft Agreement, but the parties agreed it should be included in the wage schedule as well. LaCause and Sferra further agreed that Sferra would prepare the final document. The final document has not yet been printed, and thus has not been signed.

LaCause further testified that he believed all provisions of the Agreement have been implemented and followed by the Employer and the Union. To demonstrate that the terms of the Agreement have been implemented, the Union presented the following evidence. Edward Dunn, an employee of the Employer and a union steward, testified that prior to the ratification of the Agreement he earned a wage of $13.52 per hour. He subsequently received a wage of $13.96 per hour. Dunn identified his position on the wage scale in Appendix A to the draft Agreement as Service Technician, Skill Level III, Pay Grade 23, which provided for a minimum wage of $13.96 per hour. The Union presented copies of Dunn's paycheck stubs into evidence to corroborate the wages paid.

Dunn also testified that prior to the ratification the Employer paid holiday pay at an employee's base hourly rate times 8 hours. Employees who worked during the holiday were paid an additional rate of one-half their hourly rate for a total pay rate of time-and-a-half. Subsequently, Dunn worked on a holiday and was paid holiday pay at his base hourly rate times 8 hours, plus time-and-a-half for the hours he worked during that holiday for a total pay rate of two and one-half times pay. Dunn further testified that subsequent to the ratification, two stewards (including himself) and one unit coordinator were selected to represent the unit.

Underwood corroborated that stewards were selected for the unit in late September or early October. Underwood further testified that on August 31 she filed a grievance on behalf of a terminated employee pursuant to the grievance-arbitration procedure in the Agreement. In

support thereof, the Union submitted into evidence a copy of Underwood's August 31 letter to the Employer. Thereafter, Underwood met with management in a formal grievance meeting, and the grievance was thereafter closed. Additionally, Underwood testified that the Employer compiled and submitted to the Union a seniority list pursuant to Article 9 of the parties' Agreement. This seniority list was submitted into evidence by the Union.

ANALYSIS AND CONCLUSION

I conclude, for the reasons discussed below, that the parties' draft Agreement and accompanying correspondence constitutes a contract sufficient to bar the instant petition. In order for an agreement to serve as a bar to an election, the Board's well-established contract-bar rules require that such agreement satisfy certain formal and substantive requirements. The agreement must be in writing, encompass the employees sought in the petition, embrace an appropriate unit, be signed by the parties and contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. *Appalachian Shale Products*, 121 NLRB 1160, 1161, 1163-1164 (1958). The burden of proving that a contract is a bar to an election is on the party asserting the doctrine. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517, 517-518 (1970).

The agreement need not be embodied in a formal document. An informal document or documents, such as a written proposal and a written acceptance, which nonetheless contain substantial terms and conditions of employment, are sufficient if signed. *Appalachian Shale Products*, supra at 1162. For instance, in *Georgia Purchasing, Inc.,* 230 NLRB 1174 (1977), the Board found an exchange of telegrams, signed by the respective parties, stood in the shoes of the not-yet prepared and signed final contract. The union had sent a telegram to the employer setting forth the parties' agreements for the terms of a new contract by incorporating by

reference the language of the parties' previous collective-bargaining agreement and detailing the terms of the new agreements that had been reached. The employer responded with a telegram to the union confirming the "renewal of the collective bargaining agreement" under the terms of the union's telegram. The Board found these written exchanges to be an effective collective-bargaining agreement that barred the decertification petition. *Id.* at 1175.

The Board has further clarified the law in this area to hold that the parties' signatures do not have to be on the same document. *Holiday Inn*, 225 NLRB 1092 (1976). Additionally, a written proposal need not be signed if it is accompanied by a cover letter signed by an authorized representative. In *Holiday Inn*, the Board further found that the employer's submission to the union of an unsigned contract proposal with a covering letter bearing the signature of the employer's attorney satisfies the signing requirement. *Id.*

I find that the parties' exchange of letters, signed by the respective parties, stand in the shoes of a not-yet prepared and signed final contract. The parties negotiated substantial terms and conditions of employment, which the Union presented to its membership and the membership ratified. Upon notification of ratification, the Employer memorialized the parties' agreements in a draft Agreement which it sent to the Union in a letter dated July 5 signed by the Employer's representative Sferra. The Agreement covers substantial terms and conditions of employment, and clearly defines the rights and obligations of the parties. The Union responded to the Employer's draft Agreement by its July 12 letter to the Employer signed by the Union's representative LaCause, which confirmed "[W]e finally attained an agreement that both parties could live with." These written and signed communications signify the parties' respective agreement to the contract provisions contained in the Agreement. No material matters were left

open for negotiation and no further negotiations were scheduled. The Agreement was not thereafter substantially altered.

In finding a contract-bar, I distinguish this case from *De Paul Adult Care Communities, Inc.,* 325 NLRB 681 (1998). In *De Paul*, the Board denied a request for review of a Regional Director's Decision and Direction of Election. The Regional Director found no contract-bar existed because there was no written acceptance of a contract proposal. The material facts are as follows. The union involved sent the employer a letter memorializing what it believed to be the employer's final contract offer. The union's members ratified the terms of the employer's offer. The union asserted that prior to the ratification meeting, the employer's representative left a telephone message for the union's representative stating that the union's letter accurately reflected the parties' agreement. The employer denied that any such message was left, but in any event there is no dispute that the employer did not respond in writing to the union's letter. Thereafter, the parties communicated via telephone and agreed that there were no outstanding issues. The union prepared and sent to the employer draft language for the agreement.

At no point did the employer in *De Paul* sign any document containing any of the terms of the agreement, nor did it memorialize in writing anywhere its acceptance of the agreement. Crucial to the Regional Director's decision in *De Paul* was that fact that "[w]ithout the Employer's signature on the collective-bargaining agreement, *or some document referring thereto*, the agreement is insufficient to act as a bar." *Id.* at 682 (emphasis added). The instant case is distinguishable from the facts in *De Paul* in that the Union involved here did provide written and signed communication sufficient to signify its acceptance of the Agreement, i.e. LaCause's July 12 letter to Sferra, as discussed above.

That the parties made grammatical and other nonsubstantive changes to the Agreement does not detract from the adequacy of the Agreement for purposes of determining whether it is sufficient to constitute a bar to the instant petition. In *Gaylord Broadcasting*, 250 NLRB 198 (1980), after an informal agreement was initialed by the parties and ratified by the employees, the parties subsequently met to reorganize and assemble the provisions making up the agreement. At the meeting, the parties added previously agreed-upon provisions that were inadvertently omitted from the initialed informal agreement and revised contract language that they found to be awkward. The Board observed in its decision finding a contract-bar that the minor changes that took place after the parties initialed the informal agreement did "not indicate that the [agreement] lacked finality or that its terms were insufficient to govern the parties' relationship." *Id.* at 199.

Additionally, the parties' conduct herein confirms that the Agreement was intended to be final and binding. The Union has sought to administer the contract as to the employees, as shown by the selection of union stewards and the grievance Underwood filed on behalf of a terminated employee. The Employer has applied the contract terms to the employees covered, as demonstrated by the wage raises commensurate with the bargained wage scale and processing of a grievance. Accordingly, I find that the Union and the Employer have established the existence of a contract that bars the petition for decertification.

ORDER

IT IS HEREBY ORDERED that the petition herein be and hereby is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by December 30, 1999.**

Signed at Milwaukee, Wisconsin this 16th day of December 1999.

/s/ Philip E. Bloedorn
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